NO. 56569-2-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

NICOLE WILLYARD,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THURSTON COUNTY

The Honorable John Skinder, Judge

BRIEF OF APPELLANT

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A. INTRODUCTION

Appellant Nicole Willyard[1] pleaded guilty in October of 2003 to one count of bail jumping. This plea was part of a global, indivisible agreement that included a guilty plea to unlawful possession of a controlled substance (methamphetamine) (UPCS or simple drug possession), in violation of former RCW 69.50.401(d) (2002), the statute held void and unenforceable in State v. Blake, 197 Wn.2d 170, 481 P.3d 521 (2021).

After the Blake decision, Ms. Willyard filed a motion to withdraw all the pleas she entered pursuant to the October 2003 global agreement. The trial court vacated the conviction for UPCS, but it denied Ms. Willyard's motion to withdraw the other pleas, including the plea to bail jumping. The court apparently believed it would be unjust to require the State to re-prosecute the

[1] The December 2021 transcript refers to Ms. Willyard by her recent last name, Trichler. This brief uses Willyard, for consistency with the case caption and because Ms. Willyard indicated she plans to resume using that name. See RP 4.

other offenses after so many years, and it made no inquiry into whether the pleas were knowing, voluntary, or indivisibly linked.

The trial court's decision conflicts with longstanding precedent holding that an indivisible plea agreement is always indivisible: if one plea is successfully appealed, the whole agreement must be vacated. It also conflicts with precedent holding that a plea is reversible on collateral review if it was coerced through misinformation about possible sentencing consequences. Finally, it conflicts with fundamental limits on the superior court's jurisdiction. The trial court therefore abused its discretion.

This Court must remand with instructions to allow Ms. Willyard to withdraw her October 2003 guilty plea to bail jumping.

B. ASSIGNMENTS OF ERROR

1. The trial court erred by denying Ms. Willyard's motion to withdraw all three guilty pleas entered in the October 2003 indivisible agreement, including her plea to one count of bail jumping.

Issues Pertaining to Assignments of Error

1. Is Ms. Willyard's collateral attack on her 2003 plea agreement time barred under chapter 10.73 RCW? (No. As the State concedes, Ms. Willyard's motion to withdraw her pleas triggers multiple exemptions from the time bar, including the exemptions for a significant retroactive change in the law, a facially invalid judgment and sentence, and a conviction under a statute that is facially unconstitutional.)

2. Where Ms. Willyard pleaded guilty to the nonexistent crime of simple drug possession, is she entitled to withdraw that plea? (Yes.)

3. Where Ms. Willyard's guilty plea to simple drug possession was entered the same day as her guilty plea to bail jumping, in plea documents that reference one another and as part of a global resolution facilitating concurrent sentences for those offenses, are the simple drug possession plea and bail jumping plea part of an indivisible agreement? (Yes.)

4. Where a defendant is entitled to withdraw a guilty plea entered as part of an indivisible agreement, and seeks to do so, is she not only entitled but *required* to withdraw every plea entered as part of that same agreement? (Yes.)

5. Even if the bail jumping plea were not indivisibly linked to the simple drug possession plea, would Ms. Willyard nevertheless be entitled to withdraw her guilty plea to the bail jumping count because it was an involuntary plea coerced through misinformation about the standard range sentence she faced? (Yes. No reasonable person would have accepted a deal predicated on significant punishment for a nonexistent crime.)

6. Must Ms. Willyard's bail jumping conviction be vacated because the trial court lacked jurisdiction over the underlying non-offense of simple drug possession? (Yes.)

C. STATEMENT OF THE CASE

In April of 2003, the State charged Ms. Willyard with one count of simple drug possession, in violation of former RCW 69.50.401(d) (2002). CP 2. In September of that year, the State

amended the charges to add one count of bail jumping, alleging that Ms. Willyard failed to appear for a court date in the UPCS case. CP 3.

In October of 2003, Ms. Willyard pleaded guilty to the bail jumping count, in cause no. 03-1-00645-2. CP 4-12, 13-19. The plea was part of a package deal whereby the State agreed to dismiss the UPCS count; Ms. Willyard agreed to plead guilty under a separate cause number (cause no. 03-1-01829-9) to one count of UPCS and one count of obstructing a public servant (obstruction); and the State agreed to a single sentencing hearing, where it would recommend total terms of 14 months in each case, to run concurrent with one another. CP 15, 51-52.

In the bail jumping case, 14 months was the middle of a standard range sentence based on an offender score of four. CP 5; former RCW 9.94A.515 (2003); former RCW 9.94A.510, .525(7) (2002). Two convictions for UPCS were included in Ms. Willyard's offender score: a 2002 conviction and the other current conviction in cause no. 03-1-01829-9. CP 5. Had these

convictions not been included in the score, Ms. Willyard's mid-standard range term for the bail jumping count would have been five months. Former RCW 9.94A.515 (2003); former RCW 9.94A.510, .525(7) (2002).

The sentencing court followed the State's recommendation and imposed a total of 14 months of confinement. CP 4-12.

In February 2021, the Washington Supreme Court decided Blake, which held that Washington's strict liability drug possession statute is unconstitutional because it criminalizes innocent conduct, which is beyond the legislature's power to do. 197 Wn.2d at 195. The Blake Court declared, "the portion of the simple drug possession statute creating this crime . . . violates the due process clauses of the state and federal constitutions and is void." Id.

In July of 2021, Ms. Willyard filed a pro se Motion for Relief from Judgment, seeking to vacate her bail jumping conviction on the ground that it arose from an underlying prosecution for simple drug possession - - now invalid under

Blake. CP 20-49. In October of 2021, the Thurston County Public Defender was appointed to represent Ms. Willyard and filed a motion on her behalf, under CrR 7.8(b)(4), seeking to withdraw all three guilty pleas entered under the October 2003 agreement. CP 51-58; Sub. No. 47.

The Thurston County Superior Court held a hearing on that motion on December 20, 2021. RP 4.

Defense counsel explained that, under Blake, simple drug possession under former RCW 69.50.401(d) has always been a "nonexistent crime" and a "legal nullity," and that a "package [plea] deal" is therefore entirely invalid when it is predicated in part on a plea to that non-offense. RP 7-12, 13-15.

The State agreed that Ms. Willyard was "entitled to some relief," but it argued this relief was limited to an order vacating the conviction for UPCS. RP 16. The prosecutor contended Ms. Willyard's pleas were all voluntary because, "[a]t the time of her plea, the UPCS was a valid, legal charge," and that the remedy of withdrawal would be unjust because it would require the State to

retry two 18-year-old cases. RP 16. As support for that argument, the prosecutor explained, "We're not talking about a homicide. We're talking really very minor incidents here in this case." RP 16-17.

Finally, the State also contended Ms. Willyard's claims were "moot" because she had already served her entire sentence on all the counts. RP 18-19. The prosecutor explained, "I'm not sure what effective relief we are looking for here other than the charges simply go away and her record gets cleared." RP 18-19. Ms. Willyard assured the court it could afford effective relief by clearing her record: "[Y]ou know, I have consequences for this. I mean, it affects me getting a job. You know, you have no idea. It looks like it's old, but . . . it greatly affects me." RP 23-24.

On rebuttal, defense counsel argued there is no such thing as a "voluntary plea to a nonexistent crime." RP 21.

The court denied Ms. Willyard's motion, finding she had not "satisfied that test for when withdrawal of plea is appropriate." RP 21-23; CP 70. The court did not explain what test that was. RP

21-23. It appeared to conclude it would be unfair to make the State retry the bail jumping and obstruction cases after so much time had passed. RP 13.

Ms. Willyard timely appealed. CP 73-76.

D. ARGUMENT

THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING MS. WILLYARD'S MOTION TO WITHDRAW HER OCTOBER 2003 GUILTY PLEA TO BAIL JUMPING

Blake's holding is retroactive, meaning that a conviction under Washington's simple drug possession statute "is and has always been a legal nullity." State v. Paniagua, __ Wn. App. 2d __, 511 P.3d 113, 116 (2022) (citing PRP of Ali, 196 Wn.2d 220, 236, 474 P.3d 507 (2020); Evans v. Brotherhood of Friends, 41 Wn.2d 133, 143, 247 P.2d 787 (1952)). Accordingly, this Court has repeatedly recognized that a conviction for simple drug possession, entered at any time under the statute invalidated in Blake, is a conviction for a "'nonexistent crime.'" State v. A.L.R.H., 20 Wn. App. 2d 384, 386, 500 P.3d 188 (2021) (quoting Hinton, 152 Wn.2d at 857); State v. Lindberg, noted at 19 Wn.

App. 2d 1037, 2021 WL 4860740, at *2 (citing Hinton, 152 Wn.2d at 857); State v. Landry, noted at 18 Wn. App. 2d 1037, 2021 WL 3163092, at *2 (citing Hinton, 152 Wn.2d at 857); State v. Spadoni, noted at 17 Wn. App. 2d 1046, 2021 WL 1886205, at *1 (citing Hinton, 152 Wn.2d at 857-58).[2]

As explained below, longstanding precedent holds that a petitioner establishes "actual and substantial prejudice," warranting relief on collateral review, where she has pleaded guilty to a "nonexistent crime." PRP of Hinton, 152 Wn.2d 853, 857, 100 P.3d 801 (2004). Such a petitioner is entitled to withdraw the plea. In re Thompson, 141 Wn.2d 712, 720-23, 10 P.3d 380 (2000); In re Knight, 4 Wn. App. 2d 248, 253, 421 P.3d 514 (2018) (quoting Hinton, 152 Wn.2d at 860).

Under this precedent, Ms. Willyard is entitled to withdraw her guilty plea to UPCS—a crime that did not exist at the time she

[2] Ms. Willyard cites these unpublished decisions for whatever persuasive authority this Court deems appropriate, pursuant to GR 14.1.

entered her pleas. And because that guilty plea was part of an indivisible agreement under which she also pleaded guilty to bail jumping, Ms. Willyard is entitled (indeed, she is required) to withdraw her plea to the bail jumping count, as well. Alternatively, she is entitled to withdraw her guilty plea to bail jumping because it was coerced by actually and substantially prejudicial misinformation about her standard range sentence, and because the 2003 superior court lacked jurisdiction over her non-criminal conduct.

The trial court's contrary conclusion, which appears to have been based on the view that it would be too inconvenient for the State to re-prosecute the bail jumping case 18 years after the initial charges, applies the wrong legal standard and thus constitutes an abuse of discretion.

Standard of Review

"A motion to withdraw a plea after judgment has been entered is a collateral attack," governed by chapter 10.73 RCW. State v. Buckman, 190 Wn.2d 51, 60, 409 P.3d 193 (2018); CrR

7.8(b). Accordingly, a petitioner seeking relief under CrR 7.8(b) for a constitutional error must demonstrate that the error caused "actual and substantial prejudice." PRP of Swagerty, 186 Wn.2d 801, 807, 838 P.3d 454 (2016).

Whether to grant a motion under CrR 7.8 is within the trial court's discretion. State v. Hardesty, 129 Wn.2d 303, 316-17, 915 P.2d 1080 (1996). A trial court abuses its discretion if its action is "manifestly unreasonable or based on untenable grounds." State v. Salgado-Mendoza, 189 Wn.2d 420, 427, 403 P.3d 45 (2017). A discretionary decision is manifestly unreasonable and based on untenable grounds if, in reaching that decision, the trial court applied the wrong legal standard. Id.

1. As a preliminary matter, the State has properly conceded that Ms. Willyard's motion to withdraw her pleas is not time barred.

In its response to Ms. Willyard's motions to withdraw her pleas, the State conceded that the motion was not time barred under

chapter 10.73 RCW. Sub. No. 53, at 3. That concession was proper for several reasons.

As a general rule, a motion under CrR 7.8(b) may not be filed more than one year after the judgment becomes final, "if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction." RCW 10.73.090(1). There are, however, exceptions to this time bar. RCW 10.73.100(1)-(6).

Under RCW10.73.100(2), the one-year time limit "does not apply" when "the statute that the defendant was convicted of violating was unconstitutional on its face or as applied to the defendant's conduct[.]"

Likewise, the one-year time limit "does not apply" when "there has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence, or other order entered in a criminal or civil proceeding […] and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent

regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard." RCW 10.73.100(6).

Finally, the time bar does not apply where a judgment or sentence is invalid on its face. PRP of Coats, 173 Wn.2d 123, 134-36, 138-39, 267 P.3d 324 (2011); RCW 10.73.090(1). A judgment or sentence is invalid on its face where, together with related documents such as the charging information or plea statement, it shows that the trial court exceeded its authority by sentencing the defendant for a nonexistent crime. Id.; PRP of Hinton, 152 Wn.2d 853, 857, 100 P.3d 801 (2004).

Ms. Willyard's motion to withdraw her bail jumping plea satisfies all these exemptions from the time bar in chapter 10.73 RCW. She does not expect the State will contend otherwise in this appeal but, if it does, this Court must reject the contention.

2. Ms. Willyard is entitled to withdraw her guilty plea to simple drug possession under former RCW 69.50.401(d) (2002) because it is a guilty plea to a nonexistent crime.

Under longstanding precedent, a defendant who pleads guilty to a nonexistent crime "establishes actual and substantial prejudice resulting from constitutional error." E.g., Hinton, 152 Wn.2d at 858-61. Such a defendant is therefore entitled to withdraw the plea, even on collateral attack. In re Thompson, 141 Wn.2d at 720-23; In re Knight, 4 Wn. App. 2d at 253 (quoting Hinton, 152 Wn.2d at 860); State v. De Rosia, 124 Wn. App. 138, 149, 100 P.3d 331 (2004) (quoting State v. McDermond, 112 Wn. App. 239, 243, 47 P.3d 600 (2002), overruled on other grounds by State v. Mendoza, 157 Wn.2d 582, 590-91, 141 P.3d 49 (2006)) ("'If the plea was not valid when entered, the trial court must set it aside regardless of "manifest injustice."'").

In re Thompson, 141 Wn.2d 712, illustrates this rule. In that case, the defendant pleaded guilty to one count of first-degree rape of a child, in exchange for the State's agreement to dismiss two

other counts. 141 Wn.2d at 716. The plea agreement stated the offense occurred between 1985 and 1986, but the statute creating the offense to which the defendant pleaded guilty was not enacted until 1988. Id. Four years later, the defendant filed a personal restraint petition arguing the agreement violated ex post facto and due process clause protections. Id. at 719.

Our Supreme Court granted the petition and vacated the defendant's plea, holding that the proper remedy was to "return the parties to the status quo ante, . . . the position they were in before they entered into the agreement." Id. at 715-16, 730. The Court explained that, while a defendant may waive constitutional protections in a plea agreement, the waiver must be clear from the record. Id. at 719-20. Absent clear evidence that the defendant had deliberately bargained away the protections, "the incarceration of Petitioner for an offense which was not criminal at the time he committed it is unlawful and a miscarriage of justice." Id. at 719, 720-25.

Like the petitioner in Thompson, Ms. Willyard pleaded guilty to an offense the State had no authority to charge her with—in Ms. Willyard's case, the nonexistent crime of simple drug possession under former RCW 69.50.401 (d) (2002). Compare id. and CP 51-52.[3] Even if Ms. Willyard could waive her fundamental due process right not to be punished for innocent conduct,[4] her plea agreement did not do so. CP 13-19. Like the petitioner in Thompson, Ms. Willyard is therefore entitled to withdraw her plea to the nonexistent crime.

3. Because the guilty plea to UPCS was part of the same indivisible agreement that included the guilty plea to bail jumping, Ms. Willyard is entitled (indeed, required) to withdraw both pleas.

"Plea agreements covering multiple counts are indivisible." State v. King, 162 Wn. App. 234, 241, 253 P.3d 120 (2011) (citing

[3] Unlike the petitioner in Thompson, Ms. Willyard did not receive any plausible benefit for doing so. See section D. 4. below.

[4] See Blake, 197 Wn.2d at 195.

State v. Bisson, 156 Wn.2d 507, 518–520, 130 P.3d 820 (2006); State v. Turley, 149 Wn.2d 395, 400, 69 P.3d 338 (2003)). "Thus, if there is error on one count of a multicount agreement, the entire plea agreement must be set aside upon request." Id. (citing Turley, 149 Wn.2d at 400-401).

To determine whether a plea was part of an indivisible "package deal," the reviewing court "looks to objective manifestations of intent." PRP of Bradley, 165 Wn.2d 934, 941, 205 P.3d 123 (2009), abrogated on other grounds by PRP of Stockwell, 179 Wn.2d 588, 600, 602-03, 316 P.3d 1007 (2014) and State v. Barber, 170 Wn.2d 854, 856, 248 P.3d 494 (2011). Even where a defendant enters pleas pursuant to separate documents, those pleas will be deemed part of an indivisible agreement where the documents reference one another and the record otherwise indicates they were part of a global negotiation. Id. at 943.

Ms. Willyard's pleas are clearly indivisible under this standard, and the State has never contended otherwise. See RP 16 (prosecutor arguing only that court need not reach the question of

indivisibility, because Ms. Willyard had not demonstrated the requisite "manifest injustice" warranting withdrawal of the pleas). Indeed, in its trial brief, the State argued that all Ms. Willyard's pleas collectively garnered her "the benefit of concurrent time on both cases." Sub. No. 53, at 8 (citing former RCW 9.94A.400(3) and current RCW 9.94A.589(3)). Thus, the State appears to concede the issue of indivisibility.

This concession is proper. As noted, Ms. Willyard agreed to plead guilty to the UPCS and obstruction charges (under cause no. 03-1-01829-9) and the bail jumping charge (under cause no. 03-1-00645-2), in exchange for the State's agreement to dismiss the other count of UPCS (under cause no. 03-1-00645-2) and convene a single sentencing proceeding, at which it would recommend concurrent terms of 14 months in each case. CP 4-12, 15, 51-52. All three pleas were thus entered in consideration for this global resolution facilitating concurrent sentences.

Under Turley and its progeny, this package plea deal stands or falls as a package. It is indivisible. In fact, even if Ms. Willyard

sought to withdraw or vacate *only* her plea to UPCS, the court would be required to deny her request. Swagerty, 186 Wn.2d at 812 ("specifically reject[ing]" defendant's requested remedy of resentencing on single count entered pursuant to a global agreement, as incompatible with Turley and basic principles of fairness). This Court is likewise required to grant her request to withdraw all three pleas, including to the bail jumping count.

4. Alternatively, Ms. Willyard is entitled to withdraw her guilty plea to bail jumping because it was an involuntary plea, induced by misinformation that caused actual and substantial prejudice.

"Due process requires an affirmative showing that a defendant entered a guilty plea intelligently and voluntarily." State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996); U.S. Const. Amend. XIV, Wash. Const. art. I, § 3. A plea is knowing and voluntary only when the [defendant] understands the consequences, including possible sentencing consequences." Buckman, 190 Wn.2d at 59. A guilty plea is otherwise invalid. Boykin v. Alabama, 395 U.S. 238, 242-44, 89 S. Ct. 1709, 23 L.

Ed. 2d 274 (1969); State v. Branch, 129 Wn.2d 635, 642, 919 P.2d 1228 (1996).

A guilty plea is not knowingly made when it is based on misinformation regarding a direct sentencing consequence. Mendoza, 157 Wn.2d at 584, 590-91; PRP of Quinn, 154 Wn. App. 816, 835-36, 226 P.3d 208 (2010). Misinformation about the standard range sentence applicable to defendant's crime is misinformation about a direct sentencing consequence. State v. Moon, 108 Wn. App. 59, 63-64, 29 P.3d 734 (2001).

Misinformation about a direct sentencing consequence is per se reversible error on direct appeal: the defendant need make no showing that the specific misinformation at issue induced his plea. Mendoza, 157 Wn.2d at 590-91. On collateral review, however, a petitioner seeking to withdraw a plea rendered involuntary by misinformation must show that, "were it not for the constitutional error, a rational person in his situation would more likely than not have rejected the plea and proceeded to trial." Buckman, 190 Wn.2d at 68-69 (internal quotation marks omitted).

Ms. Willyard's plea to the bail jumping count was induced by the "misinformation" that the State could prosecute and punish her for simple drug possession, including by using her current and prior UPCS convictions to elevate her offender score on the bail jumping count. It was therefore involuntary. Moon, 108 Wn. App. at 63-64. As trial counsel succinctly put it: "I don't believe you can have a voluntary plea to a nonexistent crime or an invalid crime that the State doesn't have the authority to criminalize, enact, or enforce." RP 21.

And Ms. Willyard is entitled to relief on collateral review because the misinformation about the State's authority caused undeniable prejudice. As explained, two convictions for UPCS were included in Ms. Willyard's offender score for the bail jumping count: a 2002 conviction and the other current conviction in cause no. 03-1-01829-9. CP 5. Had these convictions not been included in the score, Ms. Willyard's mid-standard range term for the bail jumping count would have been five months. Former RCW 9.94A.515 (2003); former RCW 9.94A.510, .525(7) (2002).

Faced with a standard range sentence of five months, no rational person would agree to serve a term of 14 months.[5] Additionally,

[5] It should be noted that the record indicates the sentencing court may also have added one point to Ms. Willyard's offender score for committing the current offense while on community custody. Although the court did not check this box on the judgment and sentence, the "Offender Scoring" sheet, entered the same day as Ms. Willyard's pleas, arrives at a score of "4" only by including a point for "on community placement on the date the current offense was committed." See CP 5, Sub. No. 34, 35; former RCW 9.94A.525(7) & (17) (2002) (for nonviolent present conviction, add one point for each prior adult felony; add one point if present offense committed while offender under community placement); former RCW 9.94A.030(7) ("community placement" includes community custody and postrelease supervision). The record also indicates Ms. Willyard was serving this term of community custody pursuant to the 2002 conviction for UPCS. See CP 5 (only priors listed are 2002 UPCS and 1998 assault 3); former RCW 9.94A.715 (2002) (court shall impose community custody for various crimes, including "a felony offense under chapter 69.50 . . . RCW, committed on or after July 1, 2000"); former RCW 9.94A.120(9) (1998) (community placement not available as sentencing option for third degree assault).

Division One recently held that a trial court may not include a point for committing the current offense while on community custody, if the defendant was serving that term of community custody pursuant to a conviction void under Blake. State v. French, 21 Wn. App. 2d 891, 508 P.3d 1036 (2022). Had the point for community custody status not been included in Ms. Willyard's offender score, her standard range term for the bail

the plea documents make clear that the State also threatened Ms. Willyard with another UPCS prosecution. CP 15, 51-52.

On this record, the coercive effect of the State's unconstitutional exercise of authority is manifest. The State could not have induced Ms. Willyard to agree to 14 months' incarceration for the bail jumping count, had it not artificially elevated her standard range for that offense, by including two prior convictions for UPCS, and threatened her with a third unconstitutional prosecution for that nonexistent crime. Ms. Willyard has therefore demonstrated actual and substantial prejudice stemming from this coercion, and she must be allowed to withdraw her involuntary pleas.

5. Alternatively, Ms. Willyard's bail jumping conviction must be vacated because the trial court lacked jurisdiction over the underlying non-offense of simple drug possession.

In her pro se motion, Ms. Willyard argued that her bail jumping conviction must be vacated because, by prosecuting her

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jumping count would have been one to three months. Former RCW 9.94A.510 (2002).

for the underlying non-crime of simple drug possession, the State denied her due process of law and the superior court exceeded its jurisdiction. CP 22-26. The State did not respond to this argument, but it has merit and warrants relief.

Washington superior courts have original subject matter jurisdiction over "all criminal cases amounting to felony, and . . . all cases of misdemeanor not otherwise provided for by law." Wash. Const. art. IV, § 6; RCW 2.08.010. And they have personal jurisdiction over "[a] person who commits in the state any crime, in whole or in part." RCW 9A.04.030. They do not have subject matter jurisdiction over a person accused of a non-offense, such as simple drug possession codified at former RCW 69.50.401 (d) (2002).

The trial court's power to order a defendant to appear in court to answer for the crime arises only when the court's jurisdiction over the person has been established by the filing of an affidavit establishing probable cause to believe that an offense has been committed. RCW 10.16.080. Only then can the court order

the defendant to appear either with a summons or an arrest warrant. On the other hand: "If it should appear upon the whole examination that no offense has been committed, or that there is not probable cause for charging the defendant with an offense, he or she shall be discharged." Id.

In one unpublished decision, this Court has cited State v. Downing, 122 Wn. App. 185, 93 P.3d 900 (2004), to summarily reject the argument that a bail jumping conviction is retroactively void if it stemmed from an underlying prosecution for UPCS. State v. Lindberg, noted at 20 Wn. App. 2d 1019, 2021 WL 5578390, at *2 n.1 (explaining that, in Downing, "this court determined that bail jumping is a separate offense and persists even if a defendant's underlying charges are *dismissed*") (emphasis added).[6] But Downing is clearly distinguishable because there the

[6] This Court reached the same conclusion, again in summary fashion, in PRP of Stacy, noted at 19 Wn. App. 2d 1037, 2021 WL 4860741, at *1, but that decision has been withdrawn pending reconsideration. PRP of Stacy, No. 56110-7-II, Order Granting Motion for Reconsideration, Order Withdrawing

defendant was charged with an actual crime: unlawful issuance of bank checks. 122 Wn. App. at 187-88. From the start of his prosecution until the charges were later dismissed the trial court had jurisdiction over Mr. Downing and had the power to order him to appear and punish him for failing to do so.

In Ms. Willyard's bail jumping case, by contrast, the trial court never had jurisdiction in the first place, because Ms. Willyard was never accused of a crime. See Wash. Const. art. IV, § 6; RCW 2.08.010; RCW 9A.04.030. She was only ever accused of "passive and wholly innocent nonconduct." Blake, 197 Wn.2d at 185.

E. CONCLUSION

The trial court abused its discretion by denying Ms. Willyard's motion to withdraw her October 2003 guilty plea to bail jumping. The court's decision conflicts with longstanding precedent on indivisible plea agreements involving a guilty plea to a nonexistent offense. It also conflicts with precedent holding that

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Opinion, Order Appointing Counsel, and Order Setting Briefing Schedule (filed Jan. 11, 2022).

a defendant may withdraw a guilty plea, on collateral review, if that plea was more likely than not induced by misinformation as to the possible sentencing consequences, and with basic limits on the superior court's jurisdiction.

This Court must remand with instructions to allow Ms. Willyard to withdraw all the pleas entered pursuant to the October 2003 agreement, including her plea to bail jumping.

I certify that this document was prepared using word processing software and contains 4,792 words excluding the parts exempted by RAP 18.17.

DATED this 4th day of August, 2022.

Respectfully submitted,
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